FOR ARGUMENT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1806

FORD MOTOR COMPANY
(CHICAGO STAMPING PLANT),
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
and
LOCAL 588, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONER, FORD MOTOR COMPANY

THEOPHIL C. KAMMHOLZ
WILLIAM W. MCKITTRICK
MICHAEL G. CLEVELAND
115 South LaSalle Street
Chicago, Illinois 60603

STANLEY R. STRAUSS
1750 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

JAMES R. JACKSON
WILLIAM J. ROONEY
Ford Motor Company
The American Road
Dearborn, Michigan 48121
Counsel for Ford Motor Company

Of Counsel:
VEDDER, PRICE, KAUFMAN & KAMMHOLZ
115 South LaSalle Street
Chicago, Illinois 60603

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

TABLE OF CONTENTS

Table of Authorities

Statutes

Miscellaneous

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1806

FORD MOTOR COMPANY
(CHICAGO STAMPING PLANT),
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

and

LOCAL 588, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONER, FORD MOTOR COMPANY

I. RESPONDENTS HAVE NEITHER SHOWN THAT IN-PLANT FOOD PRICES SHOULD BE A MANDATORY SUBJECT OF BARGAINING NOR REFUTED FORD'S CONTRARY ARGUMENTS.

Neither the Board nor the UAW has furnished the Court with a convincing rationale for holding in-plant food prices to be a mandatory subject of bargaining;

nor, indeed, has the AFL-CIO, the *amicus curiae* supporting their position.

A. Basic to the position of the Board and the UAW is the tautological argument that bargaining over in-plant food prices should be declared mandatory because a principal purpose of the Act—the peaceful settlement of industrial disputes through the collective bargaining process[1]—would thereby be furthered (Board Br. pp. 13, 28; UAW Br. pp. 8-9). The argument, also made by the AFL-CIO (AFL-CIO Br. pp. 16-19), begs the question, however, for its acceptance would require that there be collective bargaining over any matter that either the employer or the union might select, thereby obliterating the long-established distinction between *mandatory* and *permissive* bargaining subjects (See Ford Br. pp. 23-26, 31).[2]

B. The Board, the UAW, and the AFL-CIO also argue (Board Br. pp. 11, 15-17, 30-31; UAW Br. pp.

1. Both the Board and the AFL-CIO argue that because Ford's employees engaged in a cafeteria-vending machine boycott to protest increases in food prices, bargaining should be required with respect to such increases in the interest of industrial peace (Board Br. p. 29, AFL-CIO Br. p. 25, n. 10). The argument is unpersuasive for a finding in agreement with the Board's position might well encourage, rather than prevent, disruptive activity. See *infra*, pp. 6-7. The industrial strife that the Act seeks to avoid is strike action (withholding by employees of labor) that disrupts the economy, not the withholding of patronage that is part of the economic system. Furthermore, in numerous instances in the past where employees had undertaken economic action to enforce bargaining demands, the Board and the Courts have rejected claims that the various matters involved were mandatory subjects of bargaining. *See, e.g., N. L. R. B.* v. *Local 964, Brotherhood of Carpenters,* 447 F. 2d 643 (2d Cir. 1971); *United Slate Workers, Local 36,* 172 NLRB 2248 (1968).

2. For over 30 years the Board and the Courts have developed and employed this distinction. Only if this distinction is made can effect be given Justice Stewart's statement in *Fibreboard Paper Products Corp.* v. *N. L. R. B.*, 379 U. S. 203, 220 (1964) that: "The National Labor Relations Act does not say that the employer and employees are bound to confer upon any subject which interests either of them."

7, 13; AFL-CIO Br. p. 6, n. 2) that in-plant food prices fall within the "ordinary meaning" of the Section 8(d) phrase "terms and conditions of employment" because, as Mr. Justice Stewart pointed out in *Fibreboard Paper Products Corp.* v. *N. L. R. B.*, 379 U. S. 203, 222 (1964), that phrase is commonly understood to encompass "the various physical dimensions of [an employee's] working environment."[3] It is strikingly clear, however, that a construction which equates food prices with the term "working environment" overburdens any connotation fairly derived from the latter concept. Indeed, Mr. Justice Stewart appears to have been thinking in different terms when he wrote the passage upon which the Board and the UAW now rely. He said (379 U. S. at 222):

> In common parlance, the conditions of a person's employment are most obviously the various physical dimensions of his working environment. What one's hours are to be, what amount of work is expected during these hours, what periods of relief are available, what safety practices are observed, would all seem conditions of one's employment.

Thus stated, the "various physical dimensions of [an employee's] working environment" is a narrow concept that signifies the "what" and "when" of work performed by employees ("work amounts"; "work hours"; "periods of relief") as well as the *immediate* circumstances under which the work is performed ("safety practices"). Beyond such matters, we submit, the concept may not logically be extended. In short, the

3. The argument made by counsel for the Board that in-plant food prices are "wages" within the meaning of Section 8(d) (Board Br. p. 23, n. 22), was not addressed by the Board or the Court of Appeals and, as a *post-hoc* rationalization of counsel, should not be accepted by the Court as a basis for the Board's decision. See *N. L. R. B.* v. *Metropolitan Life Insurance Co.*, 380 U. S. 438, 443-444 (1965).

prices at which employees buy food, whether in-plant or on the outside, are too far removed from the employees' work stations, both physically and conceptually, to be considered a part of their work environment.[4]

Furthermore, even if the "work environment" concept could be stretched to include the matter of in-plant food prices, the argument that the Board, the

4. In the context of its "working environment" argument, the Board likens "food availability" (and thus food prices) to the following matters which the Board states, citing cases, are all "subject to mandatory bargaining": plant air temperature and quality, restroom privileges and conditions, and employee rental of company-owned housing (Bd. Br. p. 16 and n. 7, pp. 16-17).

Ford agrees that both the temperature and quality of plant air and employees' restroom privileges and conditions are matters that may be encompassed by Mr. Justice Stewart's "working environment" concept. Significantly, however, none of the cases cited by the Board to support its position with respect to such matters turned on, or even mentioned, the latter concept. Even more troubling is the Board's misleading citation of *N. L. R. B.* v. *Washington Aluminum Co.*, 370 U. S. 9 (1962), to support the proposition that the matter of plant air temperature is a mandatory subject of bargaining. For, as the AFL-CIO correctly noted (AFL-CIO Br. n. 2, pp. 6-7), the issue in *Washington Aluminum* was whether a walkout protesting an uncomfortably cold plant temperature was a protected concerted activity within the meaning of Section 7 of the Act; and the case in no way concerned the matter of mandatory bargaining.

Furthermore, neither of the cases cited by the Board with respect to the rental of company-owned housing equated that subject with the "working environment" concept. Rather, both *American Smelting and Refining Co.* v. *N. L. R. B.*, 406 F. 2d 552 (9th Cir. 1969), *cert. denied*, 395 U. S. 935 (1969), and *N. L. R. B.* v. *Lehigh Portland Cement Co.*, 205 F. 2d 821 (4th Cir. 1953), sustained the Board's view that bargaining was required over company-supplied housing because of the particular circumstances that were present—i.e., rents below the prevailing rate charged over a long period of time and the unavailability of alternative housing (*Lehigh Portland*); relatively isolated, company-owned housing in a company town not serviced by public transportation to other locations (*American Smelting*). In addition, compare *N. L. R. B.* v. *Bemis Bros. Bag Co.*, 206 F. 2d 33 (5th Cir. 1953), a case *not cited* in the Board brief, where the occupancy of company-owned housing was held *not* to be subject to compulsory bargaining.

UAW, and the AFL-CIO build upon the concept does not meet Ford's basic position in this case. Ford submits that for a matter to be a mandatory subject of bargaining it must "vitally affect"—as in-plant food prices clearly do not—employees' working conditions. See *Allied Chemical & Alkali Workers* v. *Pittsburgh Plate Glass Co.*, 404 U. S. 157, 179 (1971), and Ford Br. pp. 23-29.[5]

C. In its brief, Ford asserted that bargaining over in-plant food prices is not general labor-management practice (Ford Br. p. 29). Significantly, the Board, the UAW, and the AFL-CIO have not cited to the Court a single collective bargaining agreement which contains a provision setting in-plant food prices or establishing a procedure for bargaining about such prices. Moreover, the Board's statement that bargaining about in-plant food prices is a "wide-spread" industrial practice (Board Br. 23) not only is totally unsupported but is at odds with the Board's statement that "[s]uch [in-plant food price] clauses apparently exist" (Board Br. p. 24, n. 23). Further, neither the UAW nor the AFL-CIO, each of which has access to

5. Respondents seek to limit the "vitally affect" concept set forth in *Allied Chemical & Alkali Workers* to situations in which "the matter in issue directly involves individuals outside the employer-employee relationship" (Board Br. p. 31, UAW Br. pp. 10-13; AFL-CIO Br. pp. 8-9). This argument wholly ignores the fact that in *Allied Chemical & Alkali Workers* it was the Board which first perceived that the effect of retired employees' pension benefits on current employees was direct and substantial enough to "vitally affect" the latter group. See, 177 NLRB at 915-916. It is that conclusion with which the Court disagreed, deeming the effects found by the Board "speculative and insubstantial" at best, but in no way indicating that the "vitally affect" standard should be narrowly confined, as the Board now urges. 404 U. S. at 180. Indeed, the Courts of Appeals, including the Court below, have not limited the "vitally affect" standard to situations in which persons outside the employment relationship are involved. *See, e.g., N. L. R. B.* v. *Ladish Co.*, 538 F. 2d 1267, 1272 (7th Cir. 1976); *Seattle First National Bank* v. *N. L. R. B.*, 444 F. 2d 30, 33 (9th Cir. 1971).

numerous collective bargaining contracts in a wide diversity of industries, points to even a single such agreement setting, or referring to, in-plant food prices.[6]

D. Although the Board, the UAW, and the AFL-CIO argue generally that in-plant food prices should be declared to be a mandatory bargaining subject, only the UAW acknowledges the likely consequences of such a declaration. Thus, the UAW has stated: "Assume *arguendo* that the parties are petty, and fall into economic warfare over the smallest matters. The Act contemplates economic combat. . . ." (UAW Br. p. 20). In fact, should bargaining over in-plant food prices be declared mandatory, the decision would remove employee inhibitions against striking to enforce bargaining demands made with respect to such prices. Thus, "it is lawful to insist [as a condition to any agreement] upon matters within the scope of mandatory bargaining and unlawful to insist upon matters without," *N. L. R. B.* v. *Wooster Division of Borg Warner Corp.*, 356 U. S. 342, 349 (1958); and employees who strike to enforce a demand over a mandatory subject of bargaining have preferential recall rights. *Laidlaw Corp.* v. *N. L. R. B.*, 414 F. 2d 99 (7th Cir. 1969), *cert. denied*, 397 U. S. 920 (1970). Conversely, a strike to enforce a demand on a non-mandatory subject is an unfair labor practice, *N. L. R. B.* v. *Local 964, United Brotherhood of Carpenters, supra*, and employees who participate in such a strike are

6. Indeed, although the UAW surveyed some 101 Local UAW-Ford agreements, it points to only 41 that even deal with "nourishment, normally food services" (UAW Br. p. 18, n. 19). Significantly, the UAW makes no assertion that any such Local agreement deals with food pricing.

Ford has conducted its own examination of *all* its collective bargaining agreements with the UAW, and now reports to the Court that none contains a provision setting or referring to in-plant food prices.

not protected under the Act. *Dobbs Houses, Inc.* v. *N. L. R. B.*, 325 F. 2d 531 (5th Cir. 1963); *American Art Clay Co.* v. *N. L. R. B.*, 328 F. 2d 88 (7th Cir. 1964).

E. The argument of the AFL-CIO (AFL-CIO Br. p. 3) that the acceptance of Ford's position would leave in-plant food prices in the "exclusive control of management" is unpersuasive. In fact, employees have the same means available to them as do consumers for influencing prices, such as boycotting and item substitution. Indeed, that the employees in this case engaged in a boycott to protest food price increases serves to underscore the fact that the employees themselves perceived that the increases affected them as consumers of one source of food, rather than as employees whose conditions of employment changed.

F. Finally, contrary to the Board's contention (Board Br. pp. 12, 22-23), we submit that special deference should not be accorded to the Board's view with respect to in-plant food prices. For, as the Court observed in *N. L. R. B.* v. *Brown*, 380 U. S. 278, 291-292 (1965):

> . . . Courts should be "slow to overturn an administrative decision, "*Labor Board* v. *Babcock & Wilcox Co.*, 351 U.S. 105, 112, but they are not left "to 'sheer acceptance' of the Board's conclusions," *Republic Aviation Corp.* v. *Labor Board*, 324 U.S. 793, 803 . . . [R]eview is always properly within the judicial province, and courts would abdicate their responsibility if they did not fully review such administrative decisions. Of course due deference is to be rendered to agency determinations of fact, so long as there is substantial evidence to be found in the record as a whole. But where, as here, the review is not of a question of fact, but of a judgment as to the proper balance to be struck between conflicting interests, "[t]he

> deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia which results in the unauthorized assumption by an agency of major policy decisions properly made by Congress."

To accord deference to the Board's determination would be particularly inappropriate here, we submit, because the Board's decisions on the matter now before the Court have been premised on shifting rationales and have been marked by strong dissents (see Ford's principal brief, n. 9 at pp. 15-16), and have each, except for the one in this case, been overturned by a reviewing court (see Ford Br. pp. 15-21).

II. RESPONDENTS AND THE AFL-CIO HAVE INTRODUCED A NUMBER OF MATTERS IRRELEVANT TO RESOLUTION OF THE FOOD PRICE ISSUE PRESENTED IN THIS CASE.

A. The Board's assertion (Board Br. pp. 25-26) that bargaining should be required about food prices because the employer benefits from the existence of in-plant feeding facilities is unpersuasive. Were this argument to be accepted, bargaining would be required over many nonmandatory subjects. Thus, bargaining could arguably be required over pension benefits for retired employees, *Allied Chemical & Alkali Workers, supra,* because, *inter alia,* it might be said that paying such benefits enhances employee morale and the employer's ability to recruit new employees.[7] Further-

7. The same argument could be made with respect to the matter decided in *Seattle First National Bank* v. *N. L. R. B.*, 444 F. 2d 30 (1971), where the Ninth Circuit held that a bank was not required to bargain over the discontinuance of its policy of providing free to its employees investment services for which it charged its customers. The court said:

(Footnote continued on next page.)

more, Ford does not operate the in-plant food service to make a profit; and nothing in the record suggests that Ford has ever either used in-plant feeding to induce employment or asserted that it should be considered a benefit of employment.[8]

B. In an effort to demonstrate that bargaining ought to be required, the Board has cited a number of decisions dealing with in-plant feeding issues which have no bearing on whether the matter of in-plant food prices ought to be a bargainable subject (Board Br. pp. 17-18).[9] Thus, clearly not relevant to this case is

(Footnote continued from preceding page.)

> We find it difficult to understand how the use of the bank's investment service department by the employees at half-price or free of charge can be within the phrase "terms and conditions of employment." The purchase and sale of securities by employees has little or nothing to do with their employment. The source of funds may or may not originate from employment. In the words of *Fibreboard Paper Products Corp., supra,* the pricing of such services is one of the management decisions "which impinge only indirectly upon employment security and should be excluded" from Section 8(d) matters. (444 F. 2d at 33.)

8. Thus, both *N. L. R. B.* v. *Central Illinois Public Service Co.*, 324 F. 2d 916 (7th Cir. 1963) (cited by the AFL-CIO at p. 28 of its brief) and *N. L. R. B.* v. *Inland Steel Co.*, 170 F. 2d 247 (7th Cir. 1948), *cert. denied in relevant part*, 336 U. S. 960 (1949) (cited at p. 16 of the Board's brief, at p. 16 of the UAW's brief, and at pp. 6 and 23 of the AFL-CIO brief) where plans or programs of benefits were represented by the employers to their employees as such, are here irrelevant. Likewise inapposite is *Weyerhaeuser Timber Co.*, 87 NLRB 672 (1949), cited in the Board's brief at pp. 22-23, where meals were sold to employees in a remote lumber camp at below the employer's cost.

9. The Board's circular statement that "when a matter is subject to mandatory bargaining, all of its facets are subject to negotiation" (Board Br. p. 19, n. 15) ignores the fundamental issue of the impact that the particular matter involved has on employees. Moreover, the authorities cited, *Bastian-Blessing, Div. of Golconda Corp.* v. *N. L. R. B.*, 474 F. 2d 49 (6th Cir. 1973) and *Oil Chemical & Atomic Workers* v. *N. L. R. B.*, 547 F. 2d 575 (D. C. Cir. 1977), which deal with changes in health insurance carriers, in no way support the Board's proposition. In *Golconda*

(Footnote continued on next page.)

whether employees will be permitted to eat at some time during the work shift and the duration of lunch periods or breaks (matters plainly encompassed within Section 8(d)'s mandate of bargaining concerning hours of employment);[10] whether meal periods will be paid or unpaid time (which clearly involves employee wages);[11] or whether unit employees will be required to clean existing lunch areas (a matter plainly involving employees' job duties).[12]

Also distinguishable from, and not relevant to, the question presented in this case are matters which bear directly upon management's right to discipline—to use an example chosen by the UAW, whether an employee may be disciplined for producing too much scrap (UAW Br. p. 19, n. 21)—and those cases cited by the Board which deal with whether a Christmas or other bonus is so frequently and customarily paid

(Footnote continued from preceding page.)

the change of health insurance coverage from an established insurance company to a self-insured program resulted in substantial changes in coverage. 475 F. 2d at 51-52. In *OCAW*, the Fifth Circuit observed that the change in insurance carriers "effected many changes in coverage" 547 F. 2d at 582. *Compare Connecticut Light & Power Co.* v. *N. L. R. B.*, 476 F. 2d 1079, 1083 (2d Cir. 1973), a case not cited by the Board, holding that the employer was not obligated to bargain about a change in insurance carrier for medical insurance coverage for its employees because, under the test set forth in *Allied Chemical & Alkali Workers* v. *Pittsburgh Plate Glass Co.*, 404 U. S. 157 (1971), the change did not have a significant effect on employees.

10. *Cosmo Graphics, Inc.*, 217 NLRB 1061 (1975); *Bralco Metals, Inc.*, 214 NLRB 143 (1974); *Missourian Publishing Co.*, 216 NLRB 175 (1975); *D & C Textile Corp.*, 189 NLRB 769 (1971).

11. *Hasty Print, Inc., d b/a Walker Color Graphics, Inc.*, 227 NLRB 455 (1976); *Florida Steel Corp.*, 231 NLRB No. 135 (1977); *Bralco Metals, Inc.*, 214 NLRB 143 (1974).

12. *Cosmo Graphics, Inc.*, 217 NLRB 1061.

that it is properly viewed as "wages" or a "condition of employment."[13]

Likewise having no relevance here is the fact that an arbitrator might hold that a collective bargaining agreement voluntarily entered into prohibits discontinuance of a practice of providing certain foods free of charge to employees (Board Br. p. 24).[14]

13. See *N. L. R. B.* v. *Niles-Bement-Pond Co.*, 199 F. 2d 713, 714 (2d Cir. 1952) ("Where, as here, the so called gifts have been made over a substantial period of time and in amount have been based on the respective wages earned by the recipients, the Board was free to treat them as bonuses not economically different from other special kinds of remuneration . . ."); *N. L. R. B.* v. *Citizens Hotel Co.*, 326 F. 2d 501, 503 (5th Cir. 1964) (Board's view supportable "considering the regularity of the gift, the existence of a formal policy as to the eligibility of recipients and ascertainment of the dollar amounts, preemployment reference to the bonus as an inducement to prospective employees . . ."). Not cited by the Board is *N. L. R. B.* v. *Wonder State Manufacturing Co.*, 344 F. 2d 210 (8th Cir. 1965), which holds irregularly paid Christmas bonuses are not a mandatory subject.

Also distinguishable are *Fleming Mfg. Co.*, 119 NLRB 452 (1957), and *Preston Products Corp.*, 158 NLRB 322 (1966), *enforced*, 392 F. 2d 801 (D. C. Cir. 1967) *cert. denied*, 392 U. S. 906 (1968), since in both cases the Board found employers violated Section 8(a)(1) of the Act by, in addition to many other unfair labor practices, changing in-plant food services in order to discourage employees from exercising protected Section 7 rights. See Ford Br. p. 36, n. 51. Moreover, in the latter case, the Court of Appeals did not expressly consider the food service improvements in enforcing the Board's order. Likewise not relevant here is another case relied on by the Board, *O'Land, Inc.*, 206 NLRB 210 (1973), finding the employer had unlawfully refused to bargain when instituting a policy of providing free meals to employees not participating in an on-going unfair labor practice strike. The Board concluded: "In th[is] context . . . the giving of free meals had the appearance to the strikers of still another bad faith unilateral action, designed in this case to reward employees for not striking." 206 NLRB at 216.

14. The Board's citation of the following arbitration decisions, each of which involve the interpretation of a collective bargaining agreement, is thus misleading: *Universal Form Clamp Co.*, 68 LA 1223 (Miller, 1977) (contract provision interpreted to require employer to provide free coffee, as in the past, even though con-

(Footnote continued on next page.)

C. Whatever may be the proper rule when employees have no alternative food sources available (Board Br. pp. 21-22, n. 18; UAW Br. p. 3, n. 3; AFL-CIO Br. pp. 24-25, n. 10), record evidence shows that Ford's employees were not in that position. See Ford's principal brief at pp. 31-32. Further, assuming *arguendo,* that spoilage of food left in employee lockers at the Ford plant was a problem, techniques and food products are available that permit employees to ensure that they have fresh food at work. See, for example, "Packed Lunches for Everyone," *Woman's Day,* September 27, 1978, pp. 33-40, CBS Publications (New York, 1978), reproduced in part in the Appendix to this Brief, which describes some of these products and techniques. In the same vein, the venerable *All New Fannie Farmer Boston Cooking School Cookbook,* Bantam paperback at 564 (10th Ed., New York, 1965), states: "For lunchboxes and picnics. Frozen sandwiches thaw completely in about 4 hours and taste fresher (even though made days or weeks before) than sandwiches made the same day which have not been refrigerated."[15]

(Footnote continued from preceding page.)

tract stated only that employer would furnish coffee, not that it would be free); *Greater Los Angeles Zoo Ass'n,* 60 LA 838 (Christopher, 1973) (employer held to have violated contract by discontinuing free meals even though contract did not expressly require free meals); *Alpena General Hospital,* 50 LA 48 (Jones, 1967) (employer found to have violated contract by discontinuing past practice of allowing certain employees a free meal even though contract contained no express provision to that effect); *Lutheran Medical Center,* 44 LA 107 (Wolf, 1964) (to the same effect as preceding case); *Hilton Hotels Corp.,* 42 LA 1267 (Hanlon, 1964) (interpreting contract provision requiring that meals which employer had, prior to the execution of the bargaining agreement, provided free to its employees be "wholesome, hot, palatable and balanced").

15. Although the UAW argues (UAW Br. p. 3, n. 3) that Ford did not raise its evidentiary claim with respect to food

(Footnote continued on next page.)

III. THE ORDER THAT FORD BARGAIN ABOUT "FOOD SERVICES" WAS IMPROPER

The Board incorrectly asserts (Board Br. p. 16, n. 6, p. 29, n. 33) that Ford has conceded that it must bargain about many aspects of food services. Ford has made no such concession. What it has conceded is that it regarded sanitary conditions—which could affect all employees, not only those who use the cafeterias and vending machines—as a mandatory subject of bargaining. See A. 63. That Ford voluntarily bargained in the past about certain aspects of in-plant food services as permissive bargaining subjects does not require that Ford continue to do so. See Ford Br. p. 31.

In its principal brief (pp. 35-36), Ford argued that the Board's order, as enforced by the Court of Appeals, failed to define with sufficient particularity the "food services" about which Ford was directed to bargain. For the Board to respond, as it does (Board Br. p. 29, n. 33), that the meaning of its order may be fleshed out in subsequent dealings between the parties, is not a sufficient answer—especially in view of the fact that Ford is subject to being held in contempt for disobedience. Furthermore, the Board's assertion that the "elements of the term 'food services' have already largely been defined by prior bargaining" (Board Br. p. 20, n. 33) is insupportable, for, if Ford and the Union agreed about the meaning of the Union's re-

(Footnote continued from preceding page.)

spoilage in the proceedings below, Ford in fact objected before the Administrative Law Judge to the admission of hearsay evidence pertaining to the matter (see Ford's Br. pp. 32-33, n. 50) and in its brief to the court below (p. 25) likewise contended that the Board's treatment of the matter was not "supported by the facts."

quest, this dispute about "food services" would not have arisen.[16]

IV. CONCLUSION.

For the reasons set forth herein and in Ford's main brief, the judgment of the Court of Appeals should be reversed and enforcement denied the Board's order.

Respectfully submitted,

THEOPHIL C. KAMMHOLZ
WILLIAM W. MCKITTRICK
MICHAEL G. CLEVELAND
115 South LaSalle Street
Chicago, Illinois 60603

STANLEY R. STRAUSS
1750 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

JAMES R. JACKSON
WILLIAM J. ROONEY
Ford Motor Company
The American Road
Dearborn, Michigan 48121
Counsel for Ford Motor Company

Of Counsel:
VEDDER, PRICE, KAUFMAN & KAMMHOLZ
115 South LaSalle Street
Chicago, Illinois 60603

16. The contention (Board Br. p. 29, n. 33) that Ford may not now challenge the scope of the Board's order because it did not do so below is without merit. First, Ford could not have made this claim before the Board because it prevailed before the Administrative Law Judge. Second, Sections 10(e) and (f) of the Act foreclose from consideration only those objections which have "not been urged before the Board, its member, agent or agency." Third, by arguing in the Court of Appeals that it had already fulfilled whatever bargaining duty might be thought to exist, Ford placed squarely in issue the scope of an appropriate order relating to food services.

APPENDIX

WOMAN'S DAY, September 27, 1978,
pp. 130-140
The Collector's Cookbook
Woman's Day Kitchen No. 265
Packed Lunches
for Everyone

Packing lunch can be a real inflation fighter and lots of fun too. No one ever needs to be bored with a packed lunch; a little imagination, a little planning and you'll have the winning combination every time. The cookbook's menus and recipes cover light lunches, hearty lunches and low-calorie lunches—a good assortment of each, with tips on preparing and packing. Some of the light lunches are good for children to take to school. Some hearty lunches are good for hard work or harder play. Our suggestions will help you make the best possible use of your food, time and money.

* * * * *

PACKING TIPS

* Save plastic containers (from margarine, cottage cheese or yogurt) and small jars for salads and other moist foods. Clean spice jars or leakproof pill containers are good for salad dressings, catsup or mustard.

* To avoid morning rush, pack lunch boxes the night before and refrigerate, omitting hot or frozen food (add the next morning).

* For economy, buy large bags of potato chips, corn chips and pretzels. Rebag in small plastic bags.

* Purchase beverages at work or at school. Or pack small frozen cans of fruit or vegetable juice with lunch. They'll keep other foods cold, thaw and still be cold by lunchtime.

* * * * *

* Small wide-mouth thermos jars are worthwhile investments for using up main-dish leftovers (chili, soups, stews, casseroles etc.).

NO REFRIGERATION NEEDED

* Dehydrated soups (individual servings of instant soups, and soup and noodles in a cup)
* Jerky or pepperoni sticks
* Canned potted meats
* Canned Vienna sausage
* Canned meat spreads (deviled ham, corned beef, chicken, liverwurst and roast beef)
* Canned luncheon meat
* Canned tuna, salmon, shrimps and sardines
* Some pasteurized process cheese spreads (unopened)
* Peanut butter, jelly and jam
* Potato chips or sticks, chow mein noodles
* Crackers
* Canned fruits
* Fresh or dried fruits
* Canned puddings